IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARY ALSTON	:	
	:	
v.	:	
	:	Civil Action No. CCB-07-2237
BALTIMORE GAS & ELECTRIC COMPANY	:	

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MEMORANDUM

Now pending before the court is a motion for summary judgment filed by defendant Baltimore Gas & Electric Company ("BGE") against plaintiff Mary Alston. Ms. Alston is suing BGE for allegedly discriminating against her on the basis of her race and sex, and in retaliation for her filing of a complaint against her supervisor, in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42. U.S.C. §§ 2000e *et seq.*, and 42 U.S.C. § 1981. Ms. Alston is also suing BGE for alleged intentional infliction of emotional distress.[1] The issues in this case have been fully briefed and no hearing is necessary. For the reasons stated below, BGE's motion will be granted.

BACKGROUND

The following facts are presented in the light most favorable to Ms. Alston. Ms. Alston, an African-American woman, began at-will employment with BGE on July 21, 1979, working as

[1] While the complaint also alleges negligent hiring, retention, and supervision by BGE with respect to Mr. Hall, Compl. ¶ 29, Ms. Alston has since withdrawn that claim. (Pl.'s Reply Mem. at 13.) *See Perry v. FTData, Inc.*, 198 F. Supp. 2d 699, 707 (D. Md. 2002) ("If a count does nothing more than duplicate a count brought under Title VII . . ., then that count should be dismissed.") (citing *Crosten v. Kamauf*, 932 F. Supp. 676, 684 (D. Md. 1996)).

a gasoline record clerk. Up until 2001, as she worked in various clerical positions within BGE, her annual job proficiency evaluations consistently rated her "work relations" and "communications" as a 4 or a 5 on a scale from 1 to 5, with 5 equaling "full proficiency." In May 2001 Ms. Alston was assigned to a new unit, the Fleet Parts and Warranty Unit, where she was to be the Principal Administrative Assistant. She had applied to be the supervisor of the new unit, but was not selected because BGE management felt that her performance during the selection process for that position showed she "was lacking a lot of the core values" of the company.[2] (Def.'s Mem. at Ex. 3, Alston Dep. at 33.) Instead, BGE management selected Joseph Hall, a white man, to supervise the unit; Mr. Hall had previously created a successful program within BGE to repair existing fleet vehicles and get reimbursements from vehicle manufacturers under in-house warranty programs. Ms. Alston and Mr. Hall had worked together once before many years ago and according to Ms. Alston there had been "friction" between them "due to Mr. Hall's demeanor toward [her] and a complete lack of respect."[3] (Compl. ¶ 9.)

Soon after Ms. Alston was assigned to the Fleet Parts and Warranty Unit, friction between the two of them became apparent. In her first job proficiency evaluation after being

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[2] BGE lists its core values as: "Customer Focus," "Understanding Our Business," "High Performance," "Continuous Improvement," "Safety," "Teamwork," "Respect for People," "Agility," and "Integrity." (BGE Core Values, *available at:* http://www.bge.com/portal/site/bge/menuitem.cb3056952f9fd688ec8f1457025166a0/.) "Continuous Improvement" includes "seek[ing] ways to be more effective; "Teamwork" includes "communicating openly with each other"; and "Respect for People" includes being "courteous." (*Id.*)

[3] This admitted dislike of Mr. Hall is reflected in the Equal Employment Opportunity Commission's ("EEOC") eventual investigation of this matter. An affidavit that a colleague of Ms. Alston's submitted to the EEOC describes her relationship with Mr. Hall as "like oil and water. It is my understanding that the problem between them began before I sta[r]ted at BGE [in 2001]." (Pl.'s Reply Mem. at Ex. 6A, Larry Tillman Aff. at 1.)

transferred, her ratings for "work relations" and "communications" were each downgraded from 5 to 4. The evaluation for "work relations" stated that, since being assigned to the Fleet Parts and Warranty Unit, "Mary's behavior demonstrated a lack of respect toward her supervisor and co-workers by walking away during conversations and training. Mary refused work assignments when she was not in agreement, . . . [and] did not display team spirit with certain co-workers in the group including the supervisor." (Pl.'s Reply Mem. at Ex. 4E, Job Proficiency Eval. 11/00-11/01.) Still, the evaluation noted that, "[a]fter several conversations with her supervisor Mary has controlled these types of actions and has dramatically improved over the past month." (*Id.*) The "communications" portion of the job proficiency evaluation also made negative observations, noting that Ms. Alston – apparently being "disappointed about her unsuccessful pursuit of the Supervisor position" – "walked out on work conversations between her and supervisor," and "displayed unwarranted emotional and angry reactions to issues not necessitating such reaction." (*Id.*) Still, that portion too noted that Ms. Alston had recently been able to "control[] these types of actions." (*Id.*) Ms. Alston hand wrote her reaction to this noticeably different evaluation in the employee comments section, stating that she did not agree with the work relations description, that it was odd for her to be deemed a poor performer after years of good performance ratings, and that she was not upset about not getting the supervisor position.

Unfortunately, Ms. Alston's job proficiency evaluations tended to worsen as her time in the Fleet Parts and Warranty Unit went on. In an interim evaluation covering November 1, 2001 through April 15, 2002, Ms. Alston's "communications" rating dropped to 3, and her "work relations" rating dropped to 2. The evaluation cited her "stiff and . . . unprofessional"

communications, her "combative attitude," and her "disregard for supervision and . . .refusal to get . . . help from or give help to co-workers" as reasons for these lower ratings. (Pl.'s Reply Mem. at Ex. 4G, Interim Job Proficiency Eval. 11/01/01-4/15/02.) This evaluation warned:

> [A]reas have been identified where Mary's job performance and/or behaviors are not meeting expectations. . . . If she does not meet the expectations, her salary may be reduced, and she will be placed in the Performance Change Process. . . . If she fails to sustain [an improved] level of performance, further action may be taken.

(*Id.*) As a result of this negative evaluation, Ms. Alston was placed on a Performance Improvement Plan, which set out expectations she needed to meet, such as "avoid[ing] abruptness" and being respectful of other team members. (*Id.*) The end-of-the-year evaluation was not as negative, noting that "Mary has made great changes during the interim period and should be very proud of her improvements." (Pl.'s Reply Mem. at Ex. 4F, Job Proficiency Eval. 11/01-11/02.) However, after this evaluation, work relations between Ms. Alston and Mr. Hall worsened considerably.

In March 2003, Ms. Alston received a review of her compliance with the Performance Improvement Plan, in which she was given low "individual contribution level" scores – 3 on scale of 1 to 4, where 3 means "Does Not Consistently Meet Expectations"and 4 means "Fails to Meet Expectations" – in six out of seven categories.[4] (Pl.'s Reply Mem. at Ex. 4I, Indiv. Contribution Level Form.) Then in October 2003, Ms. Alston had two sets of exchanges with Mr. Hall that led to professional discipline. In the first exchange, on October 10, 2003, Ms. Alston met with Mr. Hall to request a change to her work schedule. When Mr. Hall denied her

[4] For example, in the "Team Contribution" category, Ms. Alston received a 3, which specifically means the following: "Hesitant to get involved and share information with others. May sometimes hinder the efforts of his/her team or other teams in accomplishing work." (Pl.'s Reply Mem. at Ex 4I.)

request, Ms. Alston became upset and called him a "bigot."[5] (Pl.'s Reply Mem. at Ex. 4H, Corrective Action Plan Rep.) In the second exchange, on October 14, 2003, Ms. Alston met with Mr. Hall again, this time to discuss her behavior and comments on October 10. Mr. Hall told her that he took offense to being called a bigot, and that if she called him that again he would give her a corrective action, to which she replied, "Go ahead and write me up because you are a bigot. . . . I will show everyone who you really are." (*Id.*) As a result of these altercations, Ms. Alston was given a formal warning on November 4, and placed into a six-month probationary period.[6]

Soon after, on Nov. 20, 2003, Ms. Alston received her annual job proficiency evaluation. In it, her "communications" rating fell to 2 because "[o]n numerous occasions Mary has communicated inappropriately with her supervisor," such as calling him a bigot. (Pl.'s Reply Mem. at Ex. 4J, Job Proficiency Eval. 11/02-11/03.) Moreover, the evaluation states that Ms. Alston was disrespectful when Mr. Hall attempted to administer the formal warning, doing things like "interrupting," "speaking in a loud and condescending tone," and "yell[ing]."[7] (*Id.*) The evaluation recommended a salary decrease and the implementation of a mandatory 90-day

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[5] Her recollection during her deposition was that she called him a "bigot and a racist." (Def.'s Mem. at Ex. 3, Alston Dep. at 72.)

[6] Two days prior to that warning, Ms. Alston appears to have begun to fill out an EEOC Initial Filing Form, but the attachment to that form – which contains all of the complaint details – is self-dated November 24, 2003, with a printing date stamp of December 8, 2003. (Pl.'s Reply Mem. at Ex. 3, EEOC Initial Filing Form.) Ms. Alston claims that this form was filed on or about November 2, 2003. However, there is no evidence that an EEOC investigation was conducted until after Ms. Alston filed an EEOC charge of discrimination on January 20, 2004.

[7] While her "work relations" rating rose to 3, that specific portion of the evaluation is mainly negative, stating that "Mary has reverted back to previous unacceptable behaviors that are not consistent with our Core Values," and that her behavior has "impacted the team spirit in a negative manner." (Pl.'s Reply Mem. at Ex. 4J, Job Proficiency Eval. 11/02-11/03.)

"Performance Change Process" ("PCP").[8] The PCP was implemented that same day. In it, several performance goals were set out for Ms. Alston to achieve every 30 days, the explicit understanding being that less than 100% achievement of these goals would lead to further discipline and "possible discharge." (Def.'s Mem. at Ex. 5, Performance Change Process.) These goals included Ms. Alston's "show[ing] marked improvement in her communications with her supervisor and co-workers by communicating in a polite, courteous and respectful manner at all times." (*Id.*)

It soon became clear that the working relationship between Ms. Alston and Mr. Hall was beyond repair. Ms. Alston began to avoid communications with Mr. Hall, and during mandatory meetings with him like a December 12 meeting among them and Human Resources ("HR") Consultant Pam Mattison – herself an African-American woman – Ms. Alston could not contain her discontent, at two points "screaming and hollering at her supervisor and the HR Consultant." (Pl.'s Reply Mem. at Ex. 4K, Corrective Action Plan Rep.) On January 14, 2004, the 30-day progress review was completed for Ms. Alston as part of the PCP, and it rated her performance as "[u]nsatisfactory." (Def.'s Mem. at Ex. 10, Progress Review Form at 2.) A separate Corrective Action Plan Report was then filed, in which Ms. Alston was recommended for immediate suspension, to be followed by discharge on January 20, 2004. This Report was signed by Mr. Hall and Larry Coggins, Ms. Alston's general supervisor. January 20 was thus her last day as an employee of BGE. In the company report documenting her discharge, BGE said

[8] In a letter that Ms. Alston insisted be attached to that evaluation, she writes that "I feel that Joe have [sic] used, abused and discriminated against me because I speak up for myself and will not accept him speaking to me in any kind of way. . . . I have dealt with his mistreatment of me for the past two plus years and can no longer tolerate it." (Def.'s Mem. at Ex. 6, Alston Hum. Res. Ltr.)

that she was terminated for "behavior inconsistent with BGE Core Values." (Pl.'s Reply Mem. at Ex. 4L, Indiv. Contribution Level Form.)

Ms. Alston filed a charge of discrimination with the EEOC on the day of her discharge. In it, she alleged discrimination based on retaliation.[9] Specifically, she wrote:

> I am the lone Black in my department and have been treated differently than my peers by my supervisor. In approximately October 2003, I complained to my boss that I believed he was prejudiced and he singled me out from the White female similarly situated to me for criticism. . . . Following my complaint, in November 2003, I have been demoted in salary, denied overtime and a requested schedule change, etc. On January 14, 2003, I was suspended without pay and was subsequently discharged on January 20, 2004. . . . I believe I have been discriminated against because of retaliation, in violation of Title VII . . . as to demotion, suspension, discharge and terms and conditions of employment.

(Def.'s Mem. at Ex. 1, EEOC Charge.) The EEOC investigated the charge and issued a right-to-sue letter on June 8, 2004. This lawsuit followed.

ANALYSIS

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment:

> should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law.

Fed. R. Civ. Pro. 56(c). The Supreme Court has clarified that this does not mean any factual dispute will defeat the motion:

> By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported

[9] The EEOC Charge of Discrimination Form contains a "Discrimination Based on" section, in which prospective plaintiffs are instructed to check all applicable boxes among a list of nine: "race," "color," "sex," "religion," "national origin," "retaliation," "age," "disability," and "other." (Def.'s Mem. at Ex. 1, EEOC Charge.)

> motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986) (emphasis in original).

"A party opposing a properly supported motion for summary judgment 'may not rest upon the mere allegations or denials of [his] pleadings,' but rather must 'set forth specific facts showing that there is a genuine issue for trial.'" *Bouchat v. Baltimore Ravens Football Club, Inc.*, 346 F.3d 514, 525 (4th Cir. 2003) (alteration in original) (quoting Fed. R. Civ. P. 56(e)). The court must "view the evidence in the light most favorable to . . . the nonmovant, and draw all reasonable inferences in her favor without weighing the evidence or assessing the witness' credibility," *Dennis v. Columbia Colleton Med. Ctr., Inc.*, 290 F.3d 639, 644-45 (4th Cir. 2002), but the court also must abide by the "affirmative obligation of the trial judge to prevent factually unsupported claims and defenses from proceeding to trial." *Bouchat*, 346 F.3d at 526 (internal quotation marks omitted) (quoting *Drewitt v. Pratt*, 999 F.2d 774, 778-79 (4th Cir. 1993), and citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986)).

A. Title VII Claims

Ms. Alston makes three separate Title VII claims: (1) sex discrimination, (2) race discrimination, and (3) retaliation. The first of these is barred as outside the scope of her EEOC Charge of Discrimination ("EEOC charge"). Title VII suits are limited to "those discrimination claims stated in the initial charge, those reasonably related to the original complaint, and those developed by reasonable investigation of the original complaint." *Evans v. Technologies Applications & Serv. Co.*, 80 F.3d 954, 963 (4th Cir. 1996); *see Dennis v. County of Fairfax*, 55 F.3d 151, 156 (4th Cir. 1995) (claims outside the scope of the EEOC charge are procedurally

barred). Ms. Alston's EEOC charge only expressly alleges retaliation. Because the description given in the EEOC charge suggests related racial discrimination,[10] such a charge is also cognizable. *See Chacko v. Patuxent Inst.*, 429 F.3d 505, 509 (4th Cir. 2005) (because lawyers do not typically complete EEOC charges, "courts construe them liberally"). There is no indication in her EEOC charge, however, that she was discriminated against on the basis of her sex. Indeed, she explicitly complains of being treated differently from the other "similarly situated" woman in her unit. Accordingly, this claim is barred. *See id.* (stating that a plaintiff's Title VII claim generally will be barred if his EEOC charge "alleges discrimination on one basis – such as race – and he introduces another basis in formal litigation – such as sex.").[11]

Because no direct evidence of race discrimination or retaliation has been presented, these remaining two claims are analyzed under the three-pronged burden-shifting framework set forth by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Under this framework, a plaintiff alleging Title VII discrimination must first make out a *prima facie* case of that discrimination. If she succeeds in carrying this initial burden, then "the burden shifts to the

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[10] This description consists of Ms. Alston's statements that "I am the lone Black in my department and have been treated differently than my peers by my supervisor" and that her boss "singled [her] out from the White female similarly situated to [her] for criticism." (Def.'s Mem. at Ex. 1, EEOC Charge.)

[11] BGE also contends that Ms. Alston's allegations concerning events prior to November 2003 – specifically all "pre-November 2003 perceived workplace wrongs" – are time-barred because her EEOC charge only identified discrimination as occurring on or after November 2003. (Defs.' Mem. at 8.) This contention is mistaken. In her EEOC charge, Ms. Alston states that the earliest date of discrimination was October 6, 2003. Further, in Maryland, only those discriminatory events occurring more than 300 days prior to the filing of an EEOC charge are time barred. 42 U.S.C. § 2000e-5(e)(1); *see Williams v. Giant Food Inc.*, 370 F.3d 423, 428 (4th Cir. 2004). Accordingly, because she filed her EEOC charge on January 20, 2004, any event occurring after March 26, 2003 is eligible for review by this court.

employer . . . 'to articulate a legitimate, nondiscriminatory reason for the adverse employment action.'" *Lettieri v. Equant Inc.*, 478 F.3d 640, 646 (4th Cir. 2007) (quoting *Hill v. Lockheed Martin Logistics Mgmt., Inc.*, 354 F.3d 277, 285 (4th Cir. 2004) (en banc)). Once such a reason is provided, the burden shifts back to the plaintiff to demonstrate that the given reason was a pretext for unlawful discrimination. *Id.*

i. Race Discrimination

With respect to the race discrimination claim, Ms. Alston has failed to make out a *prima facie* case. In order to establish a *prima facie* case of race discrimination, a plaintiff must show that: "(1) she is a member of a protected class; (2) she suffered adverse employment action; (3) she was performing her job duties at a level that met her employer's legitimate expectations at the time of the adverse employment action; and (4) the position remained open or was filled by similarly qualified applicants outside the protected class." *Lettieri*, 478 F.3d at 646 (quoting *Hill*, 354 F.3d at 285). It is undisputed that Ms. Alston is a member of a protected class and that she suffered an adverse employment action by being fired. Ms. Alston has failed to show, however, that her job performance was satisfactory. While she disputes the negative appraisals she received in her job proficiency evaluations, she has provided no affirmative evidence demonstrating otherwise,[12] and she has even admitted to treating Mr. Hall disrespectfully on the job, calling him "a bigot and a racist" (Def.'s Mem. at Ex. 3, Alston Dep. at 72), and walking away from him while he was talking to her. (Pl.'s Reply Mem. at Ex. 7A, Alston Statement at 3.) The evidence submitted by the defendant also amply demonstrates that, at the time of her

[12] Ms. Alston has submitted several letters of support from former colleagues. (*See* Pl.'s Reply Mem. at Exs. 5A, 5C, & 5D.) Unfortunately, none of the these letters speak to her job performance while at the Fleet Parts and Warranty Unit.

discharge, Ms. Alston was under scrutiny by both Mr. Hall and BGE Human Resources for poor performance, being on both a 6-month probation period and a 90-day PCP. (*See* Def.'s Response at Attach. 2, Mattison Aff. ¶¶ 5-8.) Accordingly, her *prima facie* case of race discrimination fails on this ground.[13] *See Settle v. Baltimore County*, 34 F. Supp. 2d 969, 1001 (D. Md. 1999) (stating that Title VII plaintiffs may not "rest on the unarticulated premise that because they are African American, and because they subjectively perceive that defendants have inflicted employment injuries upon them, they have satisfied the requirements of a *prima facie* case").

Even assuming that a *prima facie* case of race discrimination has been made out against BGE, BGE has articulated a legitimate, nondiscriminatory reason for Ms. Alston's pay cut and eventual discharge. BGE stated that her termination was due to "behavior inconsistent with BGE Core Values," and has extensive documented evidence illustrating that BGE management – not simply Mr. Hall – believed she behaved in ways inconsistent with the company's core values, values that include "continuous improvement," "teamwork," and "respect for people." (*See, e.g.*, Pl.'s Reply Mem. at Ex. 4L, Indiv. Contribution Level Form; Def.'s Response at Attach. 2, Mattison Aff. ¶¶ 8-9.) Ms. Alston's job proficiency evaluations show not only a decline in performance and workplace behavior prior to her discharge but also an unwillingness on her part to make recommended improvements to correct for the decline. This nondiscriminatory reason for discharge is also consistent with BGE management's previous decision to deny Ms. Alston the Fleet Parts and Warranty Unit's supervisor position in the first

[13] Accordingly, there is no need to reach the question of whether her position remained open or was filled by similarly qualified applicants after her discharge.

place. (*See* Def.'s Mem. at Ex. 3, Alston Dep. at 33.)

Moreover, Ms. Alston cannot show that BGE's stated reason for her discharge was pretextual. Ms. Alston proffers her previous strong job proficiency evaluations at BGE as evidence that her treatment by Mr. Hall and related evaluations were discriminatory, rendering those later evaluations a pretext for racially-motivated discharge. She has failed to provide, however, evidence that her performance in the Fleet Parts and Warranty Unit actually was satisfactory, other than her own opinion. *See DeJarnette v. Corning Inc.*, 133 F.3d 293, 299 (4th Cir. 1998) ("we have repeatedly explained that it is the perception of the decision maker which is relevant, not the self-assessment of the plaintiff") (internal quotations and alterations omitted). Further, it is not solely Mr. Hall's perception of her performance that led to her discharge.[14] As already noted, BGE management expressed an awareness of her performance shortcomings when it denied her the supervisor position in 2001, before she began working for Mr. Hall. In addition, BGE's African-American HR Consultant declared in a sworn statement that she personally witnessed Ms. Alston display "insubordination including but not limited to confrontational behavior[] [and] indifference to improvement." (Def.'s Response at Attach. 2, Mattison Aff. ¶ 9.) These facts strongly suggest that BGE's stated reasons for Ms. Alston's

[14] Ms. Alston has submitted an affidavit from another female African-American BGE employee who worked under the supervision of Mr. Hall and had an unpleasant experience with him. (Pl.'s Reply Mem. at Ex. 2, Patricia Graham Aff.) This woman was not fired, however, and her description of her experience with Mr. Hall, while negative, gives no indication that her poor treatment was due to her race. Indeed her affidavit indicates that Mr. Hall had poor relations with many employees, not necessarily African-American employees only. (*See id.* ¶ 3.) At best, then, this affidavit suggests that Mr. Hall is a difficult person to work with; it does not furnish evidence that Ms. Alston's discharge was due to impermissible racial considerations. *See Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) ("Title VII . . . does not set forth a general civility code for the American workplace.") (internal quotations and citation omitted).

discharge were not pretextual. Even if BGE's perception of Ms. Alston's performance was faulty, it would not necessarily follow that Ms. Alston's claim of race discrimination is correct; she has an affirmative obligation to establish pretext. *See St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 524 (1993). Ms. Alston has failed to do so here.

ii. Retaliation

Ms. Alston has made out a *prima facie* case of retaliation. A *prima facie* case of retaliation is shown by demonstrating that (1) the plaintiff employee engaged in a protected activity; (2) the employer acted adversely against her; and (3) the protected activity and the adverse action were causally connected. *Holland v. Washington Homes, Inc.*, 487 F.3d 208, 218 (4th Cir. 2007). A plaintiff can demonstrate that an employer "acted adversely" by showing that "a reasonable employee would have found the challenged action materially adverse, which in this context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (internal quotations and citation omitted); *see Darveau v. Detecon, Inc.*, 515 F.3d 334, 342 (4th Cir. 2008). There is no dispute that Ms. Alston's discharge was an adverse employment action. Ostensibly, the protected opposition activity in which Ms. Alston engaged was her October 2003 complaint to Mr. Hall that he was racially "prejudiced" (Def.'s Mem. at Ex. 1, EEOC Charge), although her complaints to Mr. Hall's supervisor and BGE Human Resources may be considered as well. (Compl. ¶ 23; Def.'s Mem. at Ex. 3, Alston Dep. at 62-63; Def.'s Mem. at Ex. 6, Alston Hum. Res. Ltr.) *See Kubicko v. Ogden Logistics Services*, 181 F.3d 544, 551 (4th Cir. 1999) ("as long as an employee complains to his or her employer . . ., the employee's activities are entitled

to protection" under Title VII). Ms. Alston's claimed causal link between her protected activity and her discharge is essentially that the former preceded the latter, and that the Performance Change Process leading to the discharge was managed by the supervisor about whom she complained. While this evidence is hardly conclusive, it is enough to make out a *prima facie* showing of causality. *See Carter v. Ball*, 33 F.3d 450, 460 (4th Cir. 1994) (noting with approval the conclusion of other courts that "the discharge of an employee soon after the employee engages in protected activity is strongly suggestive of retaliatory motive and thus indirect proof of causation"); *Williams v. Cerberonics, Inc.*, 871 F.2d 452, 457 (4th Cir. 1989) (also reaching this conclusion).

Nevertheless, as mentioned above, BGE has articulated a legitimate, nondiscriminatory reason for Ms. Alston's discharge unrelated to her October 2003 complaint, namely "behavior inconsistent with BGE Core Values," and Ms. Alston has failed to sufficiently rebut that reason with evidence that it was pretextual. Indeed, as to this retaliation claim, the record shows that her inconsistent behavior started well before she lodged her October 2003 complaint. By that month, she had been receiving low proficiency evaluations for over a year, had been placed on a Performance Improvement Plan, and had already been warned that if she did not make improvements in her conduct at work she would receive a reduction in pay and potentially more serious discipline. (Pl.'s Reply Mem. at Ex. 4G, Interim Job Proficiency Eval. 11/01/01-4/15/02.) In light of this evidence, Ms. Alston cannot meet her burden of establishing that BGE's stated reason for her discharge was a pretext for retaliation.

B. Intentional Infliction of Emotional Distress Claim

Ms. Alston also alleges that Mr. Hall's conduct toward her, done within the scope of his employment at BGE, amounted to intentional infliction of emotional distress ("IIED") by BGE. In Maryland, IIED claims are "rarely viable," and are to be used "sparingly and only for opprobrious behavior that includes truly outrageous conduct." *Bagwell v. Peninsula Reg'l Med. Ctr.*, 665 A.2d 297, 319 (Md. Ct. Spec. App. 1995) (internal quotations and citation omitted); *see Farasat v. Paulikas*, 32 F. Supp. 2d 244, 247 (D. Md. 1997). To succeed on an emotional distress claim in Maryland, a plaintiff must meet a very high pleading standard. Specifically, a plaintiff must allege and prove facts demonstrating: "(1) the conduct in question was intentional or reckless; (2) the conduct was extreme and outrageous; (3) there was a causal connection between the conduct and the emotional distress; and (4) the emotional distress was severe." *Arbabi v. Fred Meyers, Inc.*, 205 F. Supp. 2d 462, 465-66 (D. Md. 2002) (citing *Harris v. Jones*, 380 A.2d 611, 614 (Md. 1977)).

To prove that the conduct in question was "extreme and outrageous," the plaintiff must show that the conduct was "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Harris*, 380 A.2d at 614 (quoting Restatement (Second) of Torts § 46 comment d (1965)). Poor behavior at the workplace rarely meets this description. *See Arbabi*, 205 F. Supp. 2d at 466 ("workplace harassment . . . almost never rises to the level of outrageousness, and almost never results in such severely debilitating emotional trauma, as to reach the high threshold invariably applicable to a claim of intentional infliction of emotional distress under Maryland law").

While Ms. Alston has submitted affidavits suggesting that Mr. Hall may have been a

difficult supervisor at times, there is not sufficient evidence to find that his behavior toward her was "extreme and outrageous."[15] Given that Ms. Alston has failed to prove this element of her IIED claim, there is no need to determine whether she has proven the other three elements. *See Arbabi*, 205 F. Supp. 2d at 466 ("Each element must be pled and proved with specificity" in order for an IIED claim to stand); *Bagwell*, 665 A.2d at 319 (the "extreme and outrageous" element "is, in large respect, the entire tort"). Accordingly, this claim also fails.

CONCLUSION

For the foregoing reasons, defendant BGE's motion for summary judgment will be granted. A separate Order follows.

December 31, 2008
Date

/s/
Catherine C. Blake
United States District Judge

[15] Cases where the IIED claim *has* been successful involve facts like an employer's attempt to convince his employee to commit suicide. *Batson v. Shiflett*, 602 A.2d 1191, 1216 (Md. 1992) (discussing that IIED case and others that succeeded); *see Arbabi*, 205 F. Supp. 2d at 466 (listing several federal cases in Maryland in which the plaintiffs, despite suffering "truly repugnant intrusions on personal dignity," nevertheless were found not to have endured an intentional infliction of emotional distress).

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ORDER

For the reasons stated in the accompanying Memorandum, it is hereby **ORDERED** that:

1. The defendant's motion for summary judgment (docket entry no. 29) is **GRANTED**;

2. Judgment is entered in favor of the defendant; and

3. The Clerk shall **CLOSE** this case.

December 31, 2008
Date

/s/
Catherine C. Blake
United States District Judge